CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL No. ST/1417/2011
*(Arising out of **Order-in-Appeal** No. 09/2011 (T) ST, dated 10.03.2011 passed by CCCE&ST (Appeals), Guntur)*

Sree Rayalaseema Histrength Hypo Ltd. .. APPELLANT(s)

Vs.

CCE C&ST, Tirupati .. RESPONDENT(s)

Appearance
Shri B. Venugopal, Advocate for the appellant
Shri Arun Kumar, Jt. Commissioner/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 07.02.2019
Date of Decision: 07.02.2019

FINAL ORDER No. A/30257/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 09/2011 (T) ST, dated 10.03.2011. The relevant facts that arise for consideration are appellants are engaged in manufacture of various items falling under

various chapters of Central Excise Tariff, 1985; during the audit conducted by the department based on balance sheets for the years 2003-04 to 2006-07, a show cause notice dated 20.04.2007 read with corrigendum dated 30.04.2007 was issued alleging that they have received brokerage charges from shipping companies/agents which have escaped the service tax as they are not declared the amount in the returns filed by them, under the category of 'Clearing and Forwarding Agent Services'; the show cause notice invoking the extended period for payment of service tax. Appellant contested the show cause notice on merits and on limitation.

2. The adjudicating authority after following due process of law confirmed the demands raised along with interest and also imposed penalties. On an appeal preferred by the appellant, the first appellate authority remanded the case back to the adjudicating authority to reconsider the issue afresh. In the remand proceedings, the adjudicating authority confirmed the demands raised alongwith interest and imposed penalties; an appeal against such an order was also rejected by the first appellate authority by the impugned order. Hence this appeal.

3. Ld. Counsel submits that they are the manufacturers of excisable goods which are cleared in domestic market and for export purposes shipping agents were engaged for booking containers for the export of goods manufactured by them and depending upon the volume of booking of

the containers, the agents extend discount of 2% on the ocean freight at a later stage, which is booked as brokerage in their books of accounts. It is his submission that this amount of discount extended by the shipping agents is a discount for shipping their own export consignments and not on account of any services provided by them to the shipping agents. It is his further submission that the services have to be rendered by the appellant for visiting him with the service tax liability and in the case in hand there are no services rendered by the appellant and the containers which are booked through shipping agents are to export of their own goods. It is his further submission that they could not substantiate the submission with any evidence as the shipping agents do not give any documents for the discount in the form of incentive, but are now producing a certificate issued by the Chartered Accountant which indicates that the amounts received and recorded as brokerage are arising out of business dealings with the shipping company for export of containers by the appellant in respect of their own products. It is his submission that the impugned order be set aside and the appeal may be allowed.

4. Ld. DR reiterates the finds of the lower authorities.

5. On careful consideration of the submissions made by both sides and perusal of records, we find that the entire issue is regarding discharge of service tax liability on an amount received by the appellant from the

shipping agents. It is undisputed that appellant herein is a manufacturer and exporter of finished goods; the said finished goods are exported through containers which are procured through the shipping agents and it is a common knowledge that if the volume of exports and the containers booked are substantial, shipping agents do extend a discount to the exporter for the business generated by such shipping agents. The appellants have recorded the receipt of this amount as brokerage in their books of accounts.

6. In our considered view, the orders of the lower authorities considering the amount received by the appellant as liable for tax on the category of 'Clearing & Forwarding Agent Services' is incorrect for a simple reason that appellant is a manufacturer and has utilised the services of various shipping agents for procuring containers for export of their goods. Here, the appellant has not rendered any services of clearing and forwarding to the shipping agents.

7. Further, the certificate issued by Chartered Accountant in respect of all these transactions clearly indicate that the amounts were received by the appellant for the volume of the business given by them to various shipping agents.

8. On this factual matrix, we find that the demands raised and confirmed by the lower authorities are unsustainable for a simple reason that

appellant cannot be held to have rendered any services in respect of their own final products which were exported.

9. In view of the foregoing, the impugned order is set aside and appeal is allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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